

Senate Engrossed House Bill

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 268

HOUSE BILL 2467

AN ACT

AMENDING SECTIONS 28-872 AND 28-3512, ARIZONA REVISED STATUTES; RELATING TO
VEHICLE IMPOUNDMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)



1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 28-872, Arizona Revised Statutes, is amended to
3 read:

4 28-872. Removal of vehicles; notice; liability for costs;
5 hearing

6 A. If a police officer finds a vehicle standing on a highway in
7 violation of section 28-871 the officer may move the vehicle or require the
8 driver or other person in charge of the vehicle to move the vehicle to a
9 position off the paved or main traveled part of the highway.

10 B. A police officer may remove or cause to be removed to a place of
11 safety an unattended vehicle that is illegally left standing on a highway,
12 bridge or causeway or in a tunnel in a position or under circumstances that
13 obstruct the normal movement of traffic.

14 C. A police officer may remove or cause the removal of a vehicle to
15 the nearest garage or other place of safety as follows:

16 1. If a report has been made that the vehicle has been stolen or taken
17 without the consent of its owner.

18 2. If the person or persons in charge of the vehicle are unable to
19 provide for its custody or removal.

20 3. If the person driving or in control of the vehicle is arrested for
21 an alleged offense for which the officer is required by law to take the
22 person arrested before a proper magistrate without unnecessary delay.

23 4. If the vehicle is left unattended for more than four hours on the
24 right-of-way of a freeway that has full control of access and no crossings
25 at grade.

26 5. Within the boundaries of a city, if the vehicle is left unattended
27 for more than two hours on the right-of-way of a freeway that has full
28 control of access and no crossings at grade.

29 D. IF A POLICE OFFICER REMOVES OR CAUSES THE REMOVAL OF A VEHICLE
30 PURSUANT TO THIS SECTION, THE POLICE OFFICER SHALL DO ONE OF THE FOLLOWING
31 WHEN THE VEHICLE IS REMOVED:

32 1. PROVIDE TO THE TOW TRUCK OPERATOR A FORM THAT THE POLICE OFFICER
33 SIGNS AND THAT INCLUDES THE FOLLOWING INFORMATION:

34 (a) THE VEHICLE IDENTIFICATION NUMBER.

35 (b) A NUMBER IDENTIFYING THE LAW ENFORCEMENT AGENCY AND THE OFFICER
36 ORDERING THE TOW.

37 (c) THE YEAR, MAKE AND MODEL OF THE VEHICLE.

38 (d) THE LICENSE PLATE NUMBER IF AVAILABLE.

39 (e) THE DATE AND TIME THE VEHICLE WAS TOWED.

40 (f) THE ADDRESS FROM WHICH THE VEHICLE WAS TOWED.

41 (g) THE NAME, ADDRESS AND TELEPHONE NUMBER, IF THE TELEPHONE NUMBER
42 IS KNOWN, OF THE REGISTERED OWNER AND THE PRIMARY LIEN HOLDER OF THE VEHICLE
43 TO PERMIT THE TOWING COMPANY TO NOTIFY THE REGISTERED OWNER OR THE PRIMARY
44 LIEN HOLDER.

2. ELECTRONICALLY COMMUNICATE TO THE OFFICER'S LAW ENFORCEMENT AGENCY BOTH OF THE FOLLOWING AND PROVIDE TO THE TOWING COMPANY THAT TOWED THE VEHICLE THE NAME, ADDRESS AND TELEPHONE NUMBER, IF THE TELEPHONE NUMBER IS KNOWN, OF THE REGISTERED OWNER AND THE PRIMARY LIEN HOLDER OF THE VEHICLE:

(a) THE NAME AND TELEPHONE NUMBER OF THE PERSON TOWING THE VEHICLE.

(b) THE INFORMATION PRESCRIBED BY PARAGRAPH 1 OF THIS SUBSECTION.

E. IF A POLICE OFFICER PROVIDES THE TOW TRUCK OPERATOR WITH THE FORM DESCRIBED IN SUBSECTION D, PARAGRAPH 1 OF THIS SECTION, THE TOW TRUCK OPERATOR MUST PROVIDE THE FORM TO THE PERSON RESPONSIBLE FOR FILING THE ABANDONED VEHICLE REPORT PURSUANT TO SECTION 28-4838. THE PERSON RESPONSIBLE FOR FILING THE ABANDONED VEHICLE REPORT SHALL SUBMIT THE FORM TO THE DEPARTMENT OF TRANSPORTATION AT THE TIME THE PERSON FILES THE ABANDONED VEHICLE REPORT.

F. THE LAW ENFORCEMENT AGENCY RECEIVING ELECTRONIC INFORMATION PURSUANT TO SUBSECTION D OF THIS SECTION SHALL RECORD THE INFORMATION AS PRESCRIBED BY THE DEPARTMENT OF PUBLIC SAFETY. THE DEPARTMENT OF PUBLIC SAFETY SHALL MAKE THE INFORMATION AVAILABLE TO THE DEPARTMENT OF TRANSPORTATION.

G. WHEN THE DEPARTMENT OF TRANSPORTATION RECEIVES THE INFORMATION FROM EITHER THE DEPARTMENT OF PUBLIC SAFETY OR THE PERSON RESPONSIBLE FOR FILING THE ABANDONED VEHICLE REPORT PURSUANT TO SECTION 28-4838, THE DEPARTMENT OF TRANSPORTATION SHALL SEND NOTICE BY FIRST CLASS MAIL TO ALL PERSONS LISTED ON THE DEPARTMENT OF TRANSPORTATION'S RECORDS AS HAVING AN OWNERSHIP INTEREST IN THE VEHICLE. THE NOTICE SHALL INCLUDE THE VEHICLE IDENTIFICATION NUMBER AND THE NAME AND TELEPHONE NUMBER OF THE PERSON THAT TOWED THE VEHICLE. THE DIRECTOR OF THE DEPARTMENT OF TRANSPORTATION MAY INCLUDE ADDITIONAL INFORMATION ON THE NOTICE AS THE DIRECTOR DEEMS NECESSARY.

~~D.~~ H. Except as provided in subsection ~~E~~ I of this section:

1. The public agency employing an officer who removes or causes the removal of a vehicle under this section is not liable for the cost of towing or storing the vehicle if the officer acts under color of the officer's lawful authority.

2. Before release of the vehicle by the towing service, the owner or the owner's agent of a vehicle that is removed or caused to be removed under this article shall pay or make satisfactory arrangements to pay for any reasonable towing and storage costs incurred in towing or storing the vehicle.

~~E.~~ I. If a tow truck operator is required in writing by a public agency to tow or store a vehicle that is required as evidence in a criminal action or for future criminal investigation by the public agency, the public agency is liable for the towing and storage costs of the vehicle.

~~F.~~ J. If a police officer removes or causes the removal of a vehicle as permitted by this section, the public agency employing the officer shall provide the registered owner of the vehicle or the registered owner's agent with the opportunity for a post-storage POSTSTORAGE hearing to determine the

1 validity of the removal. This hearing shall be conducted within forty-eight
2 hours after a request, excluding weekends and holidays. The public agency
3 employing the officer may authorize its own officer or employee to conduct
4 the hearing if the hearing officer is not the same person who removed or
5 caused the removal of the vehicle. The public agency employing the officer
6 who removes or causes the removal of the vehicle is responsible for the costs
7 incurred for towing and storage if it is determined at the hearing that
8 probable cause for the removal cannot be established.

9 Sec. 2. Section 28-3512, Arizona Revised Statutes, is amended to read:

10 28-3512. Release of vehicle; definition

11 A. An impounding agency shall release a vehicle to the owner before
12 the end of the thirty day impoundment period under any of the following
13 circumstances:

14 1. If the vehicle is a stolen vehicle.

15 2. If the vehicle is subject to bailment and is driven by an employee
16 of a business establishment, including a parking service or repair garage,
17 who is subject to section 28-3511, subsection A.

18 3. If the owner presents proof satisfactory to the impounding agency
19 that the owner's driving privilege has been reinstated.

20 4. For the spouse of the owner or any person who is identified as an
21 owner of the vehicle on the records of the department, if the spouse or
22 person was not the driver of the vehicle at the time of removal and
23 impoundment and the spouse or person enters into an agreement with the
24 impounding agency that stipulates that if the spouse or person allows an
25 unlicensed driver to drive the spouse's or person's vehicle within one year
26 after the agreement is signed, the spouse or person will not be eligible to
27 obtain release of the spouse's or person's vehicle before the end of the
28 thirty day impoundment period.

29 B. A vehicle shall not be released pursuant to subsection A of this
30 section except on order of a justice court pursuant to section 28-3514 or on
31 presentation of the owner's or owner's spouse's currently valid driver
32 license to operate the vehicle and proof of current vehicle registration and,
33 if the driving privilege of the person driving the vehicle was suspended due
34 to a previous conviction for driving under the influence pursuant to section
35 28-1381, subsection K, paragraph 4, section 28-1382 or section 28-1383 and
36 a certified ignition interlock device was required to be installed on the
37 vehicle, on presentation of proof of installation of a functioning certified
38 ignition interlock device in the vehicle. The impounding agency, storage
39 yard, facility, person or agency having physical possession of the vehicle
40 shall allow access to the impounded vehicle for the purpose of installing a
41 certified ignition interlock device. The impounding agency, storage yard,
42 facility, person or agency having physical possession of the vehicle shall
43 not charge a fee for providing access to the vehicle or for the installation
44 of the certified ignition interlock device.

1 C. The owner is responsible for paying all towing and storage charges
2 related to the impoundment of the vehicle and any administrative charges
3 established pursuant to section 28-3513, unless the vehicle is stolen and the
4 theft was reported to the appropriate law enforcement agency. If the vehicle
5 is stolen and the theft was reported to the appropriate law enforcement
6 agency, the operator of the vehicle at the time of impoundment is responsible
7 for all towing, storage and administrative charges.

8 D. The impounding agency shall release a vehicle to a person, other
9 than the owner, identified on the department's record as having an interest
10 in the vehicle before the end of the thirty day impoundment period if all of
11 the following conditions are met:

12 1. The person is a motor vehicle dealer, bank, credit union or
13 acceptance corporation or any other licensed financial institution legally
14 operating in this state or is another person who is not the owner and who
15 holds a security interest in the vehicle.

16 2. The person pays all towing and storage fees related to the
17 impoundment of the vehicle unless the vehicle is stolen and the theft was
18 reported to the appropriate law enforcement agency. If the vehicle is stolen
19 and the theft was reported to the appropriate law enforcement agency, the
20 operator of the vehicle at the time of impoundment is responsible for all
21 towing, storage and administrative charges.

22 3. The person presents foreclosure documents or an affidavit of
23 repossession of the vehicle.

24 E. Before a person described in subsection D of this section releases
25 the vehicle, the person may require the owner to pay charges that the person
26 incurred in connection with obtaining custody of the vehicle, including all
27 towing and storage charges that are related to the impoundment of the vehicle
28 and any administrative charges that are established pursuant to section
29 28-3513.

30 F. A vehicle shall not be released after the end of the thirty day
31 impoundment period except on presentation of the owner's or owner's agent's
32 currently valid driver license to operate the vehicle and proof of current
33 vehicle registration and, if the driving privilege of the person driving the
34 vehicle was suspended due to a previous conviction for driving under the
35 influence pursuant to section 28-1381, subsection K, paragraph 4, section
36 28-1382 or section 28-1383 and an ignition interlock device was required to
37 be installed on the vehicle, on presentation of proof of installation of a
38 functioning certified ignition interlock device in the vehicle. The
39 impounding agency, storage yard, facility, person or agency having physical
40 possession of the vehicle shall allow access to the impounded vehicle for the
41 purpose of installing a certified ignition interlock device. The impounding
42 agency, storage yard, facility, person or agency having physical possession
43 of the vehicle shall not charge a fee for providing access to the vehicle or
44 for the installation of the certified ignition interlock device.

1 G. The storage charges relating to the impoundment of a vehicle
2 pursuant to this section shall not exceed ten FIFTEEN dollars for each day
3 of storage.

4 H. The impounding agency shall have no lien or possessory interest in
5 a stolen vehicle if the theft was reported to the appropriate law enforcement
6 agency. The impounding agency shall release the vehicle to the owner or
7 person other than the owner as identified in subsection D of this section
8 even if the operator at the time of impoundment has not paid all towing,
9 storage and administrative fees.

10 I. For the purposes of this section, "certified ignition interlock
11 device" has the same meaning prescribed in section 28-1301.

APPROVED BY THE GOVERNOR MAY 26, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 27, 2004.



Passed the House March 8, 2004,

Passed the Senate May 13, 2004,

by the following vote: 58 Ayes,

by the following vote: 20 Ayes,

0 Nays, 2 Not Voting

6 Nays, 4 Not Voting

Jake Flake
Speaker of the House

Ken Blumenthal
President of the Senate

Norman L. Moore
Chief Clerk of the House

Chermaine Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

H.B. 2467

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

May 19, 2004,

by the following vote: 59 Ayes,

0 Nays, 1 Not Voting

Roberto Flores
Speaker of the House
Norman L. Moore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

20th day of May, 2004,

at 10:42 o'clock a. M.

Jennifer L. Barba
Secretary to the Governor

Approved this 26 day of

May, 2004,

at 4:40 o'clock P. M.

J. R. R. R.
Governor of Arizona

H.B. 2467

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 27 day of May, 2004,

at 8:29 o'clock A. M.

Janice K. Brewer
Secretary of State